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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

	)	
In re:	)	Chapter 11
	)	
LEHMAN BROTHERS HOLDINGS INC., et al.	)	Case No. 08-13555 (JMP)
	)	
Debtors,	)	Jointly Administered
	)	
	)	

**LIMITED OBJECTION OF TUXEDO RESERVE OWNER LLC AND  
TUXEDO TPA OWNER LLC TO PROPOSED ASSUMPTION OF LOAN  
AGREEMENTS AS SET FORTH IN PLAN SUPPLEMENT AND NOTICES  
OF PROPOSED ASSUMPTION OF EXECUTORY CONTRACTS**

Tuxedo Reserve Owner LLC (“**Tuxedo Reserve**”) and Tuxedo TPA Owner LLC (“**Tuxedo Owner**”; and together with Tuxedo Reserve, collectively, the “**Tuxedo Parties**”), by and through their undersigned counsel, respectfully submit this limited objection to the proposed assumption by Lehman Brothers Holdings, Inc. (“**LBHI**”) and Lehman Commercial Paper, Inc. (“**LCPI**”); and together with LBHI, collectively, the “**Debtors**”), of certain loan agreements, to the extent to that such loan agreements are not being assumed as one unitary agreement. The Tuxedo Parties respectfully state as follows:

### **PRELIMINARY STATEMENT**

The Debtors' three loans to the Tuxedo Parties pursuant to a single pre-petition loan facility were modified by certain pre-petition amendments and also by a certain post-petition amendment dated as of May 26, 2010. Although it appears that the Debtors currently intend to assume all three loans, as modified, the Debtors have reserved their rights to remove one or more of the loans or amendments at or prior to confirmation. Accordingly, the Tuxedo Parties object to the assumption of some but not all of the documents and amendments comprising the loan facility. The Tuxedo Parties have no objection to the assumption of all three loans, provided that they are all assumed, as each has been amended to date.

### **BACKGROUND**

1. The Tuxedo Parties are the owners and developers of an approximately 2,295 acre master planned community located in the Town of Tuxedo and Village of Slootsberg, Counties of Orange and Rockland, New York (the "**Project**"). The Tuxedo Parties are the borrower under a pre-petition \$128 million loan facility (the "**Loan Facility**") consisting of a Senior Loan, Building Loan, and Project Loan (each as defined below) under which debtor LCPI is the administrative agent and debtor LBHI is the sole lender.

2. The loan agreements associated with the Loan Facility include:

(i) That certain Senior Loan Agreement dated September 6, 2006 among the Tuxedo Parties, as borrower, LCPI, as agent, and LBHI, as lender, as amended by the First Amendment to Senior Loan Agreement dated as of December 28, 2006, as further amended by the Second Amendment to Senior Loan Agreement dated as of April 13, 2007 (as so amended, the "**Senior Loan Agreement**"), pursuant to which, among other things, LBHI agreed to extend

a senior loan to the Tuxedo Parties in the aggregate principal amount of \$48,000,000 (the "**Senior Loan**");

(ii) That certain Building Loan Agreement dated September 6, 2006 among the Tuxedo Parties, as borrower, LCPI, as agent and LBHI, as lender, as amended by the First Amendment to Building Loan Agreement, dated as of December 28, 2006, as further amended by the Second Amendment to Building Loan Agreement, dated as of April 13, 2007 (as so amended, the "**Building Loan Agreement**"), pursuant to which, among other things, LBHI agreed to extend a building loan to the Tuxedo Parties in an aggregate principal amount of \$40,000,000 (the "**Building Loan**"); and

(iii) That certain Project Loan Agreement dated September 6, 2006 among the Tuxedo Parties, as borrower, LCPI, as agent, and LBHI, as lender, as amended by the First Amendment to Project Loan Agreement, dated as of December 28, 2006, as further amended by the Second Amendment to Project Loan Agreement, dated as of April 13, 2007 (as so amended, the "**Project Loan Agreement**"; and together with the Senior Loan Agreement and the Building Loan Agreement, collectively, the "**Loan Agreements**"), pursuant to which LBHI agreed to extend a project loan to the Tuxedo Parties in an aggregate principal amount of \$40,000,000 (the "**Project Loan**").

3. As of the date the Debtors commenced their Chapter 11 cases, the Debtors had not advanced substantial portions of the principal amounts of the Building Loan and the Project Loan.

4. Pursuant to an Omnibus Amendment to Senior Loan Agreement, Project Loan Agreement and Other Loan Documents dated as of May 26, 2010, among the Tuxedo Parties, the Debtors, and certain other parties (the "**Third Amendment**"), among other things, the Senior

Loan Agreement, Building Loan Agreement, and the Project Loan Agreement were each amended and the Tuxedo Parties and the Debtors resolved their disputes regarding the unfunded portions of the Loan Facility.

5. By Order dated September 1, 2011 [ECF 19631], this Court approved the Debtors' Disclosure Statement for Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors (the "**Plan**").

6. On October 25, 2011, the Debtors filed their Plan Supplement [ECF No. 21254], which sets forth at Exhibit 2 the Schedule of Executory Contracts and Unexpired Leases to Be Assumed Pursuant to Section 11.1 of the Plan.

7. The Debtors listed the Senior Loan Agreement, the Building Loan Agreement, and the Project Loan Agreement on Exhibit 2 to the Plan Supplement, see Part C-Commercial Real Estate Agreements, at pages 93-97. The relevant portions of such pages to Part C of Exhibit 2 to the Plan Supplement are as follows:

Debtor	Counterparty	Date	Title of Agreement	Description
LCPI/LBHI	Tuxedo Reserve Owner LLC, Tuxedo TPA Owner LLC	09/06/2006	Building Loan Agreement among Tuxedo Reserve Owner LLC, Tuxedo TPA Owner LLC, Lehman Commercial Paper Inc. and Lehman Brothers Holdings Inc. in the amount of \$35,000,000	Building Loan Agreement
LCPI/LBHI	Tuxedo Reserve Owner, LLC, Tuxedo TPA Owner LLC	09/06/2006	Project Loan Agreement among Tuxedo Reserve Owner LLC, Tuxedo TPA Owner LLC, Lehman Commercial Paper Inc. and Lehman Brothers Holdings Inc. in the amount of \$50,000,000	Project Loan Agreement
LCPI/LBHI	Tuxedo Reserve Owner, LLC, Tuxedo TPA Owner	09/06/2006	Senior Loan Agreement among Tuxedo Reserve Owner LLC, Tuxedo TPA	Senior Loan Agreement

	LLC		Owner LLC, Lehman Commercial Paper Inc. and Lehman Brothers Holdings Inc. in the amount of \$80,000,000	
LCPI/LBHI	Tuxedo Reserve Owner, LLC, Tuxedo TPA Owner LLC	12/28/2006	First Amendment to Senior Loan Agreement between Lehman Commercial Paper Inc., Lehman Brothers Holdings Inc., Tuxedo Reserve Owner LLC and Tuxedo TPA Owner LLC	Amendment to Loan Agreement
LCPI/LBHI	Tuxedo Reserve Owner, LLC, Tuxedo TPA Owner LLC	01/14/2008	Second Amendment to Senior Loan Agreement among Tuxedo Reserve Owner LLC, Tuxedo TPA Owner LLC, Lehman Commercial Paper Inc. and Lehman Brothers Holdings Inc. in the amount of \$48,000,000	Amendment to Loan Agreement
LCPI/LBHI	Tuxedo Reserve Owner, LLC, Tuxedo TPA Owner LLC	12/28/2006	First Amendment to Building Loan Agreement among Lehman Commercial Paper Inc, Lehman Brothers Holdings Inc, Tuxedo Reserve Owner LLC and Tuxedo TPA Owner LLC	Amendment to Loan Agreement
LCPI/LBHI	Tuxedo Reserve Owner, LLC, Tuxedo TPA Owner LLC	02/29/2008	Second Amendment to Building Loan Agreement among Tuxedo Reserve Owner LLC, Tuxedo TPA Owner LLC, Lehman Commercial Paper Inc and Lehman Brothers Holdings Inc in the amount of \$40,000,000	Amendment to Loan Agreement
LCPI/LBHI	Tuxedo Reserve Owner, LLC, Tuxedo TPA Owner LLC	12/28/2006	First Amendment to Project Loan Agreement between Lehman Commercial Paper Inc, Lehman Brothers Holdings Inc, Tuxedo Reserve Owner LLC and Tuxedo	Amendment to Loan Agreement

			TPA Owner LLC in the amount of \$50,000,000	
LCPI/LBHI	Tuxedo Reserve Owner, LLC, Tuxedo TPA Owner LLC	01/14/2008	Second Amendment to Project Loan Agreement among Tuxedo Reserve Owner LLC, Tuxedo TPA Owner LLC, Lehman Commercial Paper Inc and Lehman Brothers Holdings Inc in the amount of \$25,000,000	Amendment to Loan Agreement

7. Thereafter, by nine (9) separate Notices of Proposed Assumption of Executory Contracts and Unexpired Leases Pursuant to Debtors' Third Amended Joint Chapter 11 Plan pursuant to Section 1121 of the Bankruptcy Code (collectively, the "**Notices of Proposed Assumption**"), each dated October 27, 2011, the Debtors gave notice of their intent to assume the nine agreements described in paragraph 7 above. However, neither the Plan Supplement nor the Notices of the Proposed Assumption refer to the Third Amendment.

8. Subsequently, on November 4, 2011 the Debtors filed an Amendment No. 1 to Plan Supplement [ECF No. 21665], in which the Debtors added the Third Amendment to Part C of Exhibit 2 to the Plan Supplement. In addition, the Debtors delivered a Notice of Proposed Assumption of Executory Contracts and Unexpired Leases Pursuant to Debtors' Third Amended Joint Chapter 11 Plan pursuant to Section 1121 of the Bankruptcy Code, dated November 4, 2011, in which the Debtors indicated their intent to assume the Third Amendment.

**LIMITED OBJECTION**

9. The Plan Supplement, as amended, and the Notices of Proposed Assumption appear to treat the agreements as ten (10) separate and distinct agreements. The Tuxedo Parties disagree and dispute such treatment. Specifically, the Tuxedo Parties submit that there are not in fact ten (10) separate agreements, but rather that all such documents constitute one (1) single integrated agreement for the entire Loan Facility, which should assumed in total. Accordingly, the Tuxedo Parties object to the assumption of the Senior Loan Agreement, the Building Loan Agreement and the Project Loan Agreement to the extent (i) they are not all assumed together, and all as modified by the Third Amendment and (ii) such assumption would alter or affect in any way the already agreed to settlement between the parties pursuant to the Third Amendment.

**CONCLUSION**

WHEREFORE, for the reasons stated above, the Tuxedo Parties request that the Court sustain their limited objections and that the Court grant such other and further relief as is just and proper.

Dated: New York, New York  
November 9, 2011

Respectfully submitted,  
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**Certificate of Service**

I hereby certify that on November 9, 2011, I caused the foregoing document to be electronically filed with the Clerk of the District Court using the CM/ECF system which sent notification of such filing to the parties registered for electronic service via the Court's electronic transmission facilities, and caused it to be mailed by the United States Postal Service, first class mail, to the following parties:

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November 9, 2011

/s/ Steven H. Newman  
STEVEN H. NEWMAN